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**BEFORE THE
SURFACE TRANSPORTATION BOARD**

ENTERED
Office of Proceedings
FEB 16 2011
Part of
Public Record

Finance Docket No. 34658 (Sub-No. 1)

**U.S. ENVIRONMENTAL PROTECTION AGENCY'S
PETITION FOR WAIVER AND REQUEST FOR EXTENSION**

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I. Introduction

Pursuant to 49 C.F.R. §§ 1104.7(b) and 1110.9, the United States Environmental Protection Agency requests an extension of time to reply to Alaska Railroad Corporation's (ARRC) Petition for Declaratory Order, filed on January 28, 2011. EPA has contacted counsel for petitioner, who represents that ARRC does not object to a waiver of the 10-day filing requirement in 49 C.F.R. § 1104.7(b) and EPA's request for an extension until March 2, 2011.

II. Argument

Under the Board's rule for pleadings, EPA's reply to the petition would have been due on February 17, 2011.¹ The Board's rules governing extensions also provide that, upon request, the reply period may be extended by the Board in its discretion and for good cause.² Requests for extension must be filed "not less than 10 days before the due date."³ The rules further provide that "[a]ny person may petition the Board for a permanent or temporary waiver of any rule."⁴ In such cases, the Board has waived the above filing deadline where there are no objections and no party will be prejudiced.⁵

Under the above rules, EPA's request for extension of time was due by February 7, 2011. EPA therefore seeks a waiver of the "not less than 10 days before the due date" filing requirement of 49 C.F.R. § 1104.7(b) and requests an extension until March 2, 2011, to file a reply to ARRC's petition. EPA submits that good cause exists to support this request. Since

¹ 49 C.F.R. § 1104.13(a).

² 49 C.F.R. § 1104.7 (b).

³ *Id.*

⁴ 49 C.F.R. § 1110.9.

⁵ *Petition for Declaratory Order--Motor Carrier Transp. of Passengers in Colorado*, 2005 WL 2087250 at *2, n.1, STB Docket No. MC-F-21008 (Aug. 29, 2005).

ARRC's request was filed, EPA has been diligently reviewing the legal and factual issues raised and developing its reply. At the same time, ARRC's petition raises statutory preemption issues of potentially national significance. EPA's request for an additional 13 days will facilitate necessary coordination between EPA Headquarters and Region 10. In addition, ARRC's petition implicates EPA's shared responsibilities with the U.S. Army Corps of Engineers in implementing Section 404 of the Clean Water Act.⁶ The extension will allow EPA to coordinate with the Corps on issues relevant to both agencies. Given that ARRC does not object to EPA's filing, EPA submits that no party will be prejudiced by either the waiver or the extension.

III. Request for Relief

EPA therefore requests that the Board consider this request and grant an extension until March 2, 2011, to reply to ARRC's Petition for Declaratory Order.

Dated this 16th day of February, 2011

Respectfully submitted,



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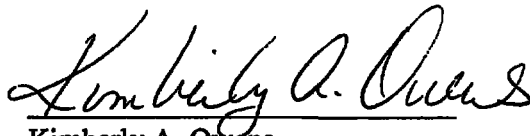
⁶ 33 U.S.C. § 1344.

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing U.S. ENVIRONMENTAL PROTECTION AGENCY'S PETITION FOR WAIVER AND REQUEST FOR EXTENSION was filed electronically today with the Surface Transportation Board and served by United States First Class Mail upon the following:

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DATED this 16th day of February 2011